

July 1, 2005

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VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: MB Docket No. 03-15
KOTV-DT, Tulsa, Oklahoma
Facility ID No. 35434
Request For Waiver of the July 1, 2005 Replication Deadline

Dear Ms. Dortch:

Griffin Licensing, L.L.C. ("Griffin"), the licensee of analog station KOTV, Channel 6, Tulsa, Oklahoma ("KOTV"), and the permittee of digital station KOTV-DT, Channel 55, Tulsa, Oklahoma ("KOTV-DT"), by its attorneys, hereby submits this Request for Waiver ("Request") of the July 1, 2005 replication deadline set forth in the Commission's *Second Periodic Review*.¹ This Request is being filed in compliance with the waiver procedures set forth in the Commission's June 15, 2005 *Public Notice* in this proceeding.²

In the *Second Periodic Review*, the Commission requires all DTV stations, with limited exceptions, in markets 1 through 100 affiliated with one of the top four television networks to comply with a July 1, 2005 "use-it-or-lose-it" deadline for replicating or maximizing their digital signals.³ DTV stations failing to meet that deadline face potential loss of interference protection in the future.⁴ Absent grant of this Request, the July 1, 2005 deadline applies to KOTV-DT because it is in the 60th market and is a CBS affiliate.

In the *Public Notice*, the Commission stated:

¹ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, MB Docket No. 03-15, FCC 04-192 (rel. Sept. 7, 2004) ("*Second Periodic Review*").

² See *DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extensions of the Deadline*, Public Notice, DA 05-1636, at 3 (rel. June 15, 2005) ("*Public Notice*").

³ *Second Periodic Review* ¶ 78.

⁴ *Id.* ¶ 85.

Several stations have indicated that they may be able to come close to meeting the applicable replication or maximization requirements but cannot reach 100% replication or maximization. For example, some stations with a top-mounted analog antenna and a side mounted digital antenna state that they cannot completely replicate their analog signal in digital without switching the antennas, which would cause some analog viewers to lose service. For stations in this situation, the following should be addressed in submitting a request for waiver of the interference protection deadline: (1) how close to full replication/ maximization the station will be as of the deadline; (2) the reason the station is unable to fully comply; (3) the cost to the station and the impact on viewers if the station were required to fully comply; (4) whether the station will be able to modify its operation to fully comply after analog operation terminates (*e.g.*, relocate [its] DTV antenna to the top of the tower); and (5) any other relevant factors.⁵

The situation described in the *Public Notice* applies to KOTV-DT. KOTV-DT was issued a Construction Permit in April 2000 authorizing a maximum effective radiated power ("ERP") of 970 kilowatts ("kW") and an antenna height above average terrain ("HAAT") of 490.4 meters.⁶ On November 4, 2004, Griffin filed an FCC Form 381 certifying its intention to construct replicated facilities for KOTV-DT.⁷ Subsequently, on December 21, 2004, the Commission issued a Public Notice listing KOTV-DT's authorized parameters as 1000 kW ERP and 570 meters HAAT.⁸ In addition, Griffin filed an FCC Form 382 on February 10, 2005 in which it elected not to choose a permanent digital channel for KOTV-DT until the second round of channel elections, scheduled for later this year.⁹

Griffin diligently constructed the facilities authorized in the Construction Permit and, on May 25, 2005, filed an application for a license to cover the Construction Permit.¹⁰ The license application remains pending.

Griffin is unable to fully replicate its facilities at this time for the reasons cited in the *Public Notice*. Specifically, the NTSC facilities for KOTV are currently situated at 570 meters HAAT on the tower on which KOTV-DT's DTV facilities are located, thus precluding Griffin from fully replicating KOTV-DT without causing KOTV analog viewers to lose service.

⁵ *Public Notice* at 3.

⁶ See FCC File No. BPCDT-19991012AAQ (granted Apr. 7, 2000) ("Construction Permit").

⁷ See FCC File No. BCERCT-20041104ATZ.

⁸ *DTV Channel Election Information and First Round Election Filing Deadline*, Public Notice, DA 04-3922, at Table 1 p. 47 (rel. Dec. 21, 2004).

⁹ See FCC File No. BFRECT-20050210ADH. Griffin was permitted to defer to the Second Round because analog KOTV operates on Channel 6 (a low VHF channel) and KOTV-DT is allotted an out-of-core channel, Channel 55. See Instructions to FCC Form 382.

¹⁰ See FCC File No. BLCDDT-20050525AFX (accepted for filing May 26, 2005).

Therefore, in response to the criteria set forth in the *Public Notice*, Griffin responds as follows:

(1) How close to full replication/maximization the station will be as of the deadline.

As described in further detail in the attached Technical Exhibit, KOTV-DT is providing coverage to **95.1%** of the number of viewers it would serve if the station were at its fully replicated HAAT of 570 meters.

(2) The reason the station is unable to fully comply.

Griffin cannot fully comply with the replication requirement without severely disrupting service to its analog viewers. KOTV's transmitting antenna is a top-mounted antenna on a multi-use tower. Structurally, it is not possible to relocate all other transmitting facilities in order to permit KOTV-DT to position its DTV antenna at the same height as the analog KOTV antenna. In order to fully comply, KOTV would need to cease its analog operation for weeks, perhaps months, while a tower crew removed the NTSC antenna from its present location on the tower and placed the DTV antenna at that tower location. To take both of these steps, prior Commission approval is required. Furthermore, the tower on which KOTV and KOTV-DT are located was constructed in 1984, is fully loaded, and may not be capable of supporting both the NTSC antenna and digital antenna at the top of the tower (570 meters HAAT). Therefore, Griffin submits that it is unable to fully comply with the July 1 replication requirement given these constraints.

(3) The cost to the station and the impact on viewers if the station were required to fully comply.

If the station were required to fully comply with the replication requirement, Griffin would need to purchase a new top-mounted DTV antenna and a new top-mounted NTSC antenna, at a cost of approximately \$750,000, and then reposition the NTSC antenna to a lower height in order to raise the DTV antenna height. Some NTSC viewers may lose service permanently as a result of the lowering of the NTSC antenna, and all NTSC viewers would be without service for weeks, perhaps months, as explained above in (2) above. The financial effect on Griffin likely would be losses well in excess of one million dollars.

Moreover, structural studies have not been generated to confirm that top-loading of the KOTV NTSC antenna and the KOTV-DT antenna is structurally possible, particularly in view of the fact that other broadcasters currently have top-loaded antennas located on this tower. Adding two more top-loaded antennas to this tower may be physically impossible given the structural limitations of the tower. Once the transition is completed, however, the NTSC antennas will be removed from the tower, which should permit top-loading of the KOTV-DT antenna at the present location of the KOTV NTSC

antenna on the tower.

(4) Whether the station will be able to modify its operation to fully comply after analog operation terminates (e.g., relocate its DTV antenna to the top of the tower).

Currently, there is a freeze on the filing of modification applications that would increase a station's DTV service area.¹¹ When the freeze is lifted, Griffin intends to propose modifications to fully replicate the station, and to make those changes at the time of, or prior to, termination of the NTSC service. Specifically, Griffin would propose to dismantle the analog antenna now operating at 570 meters HAAT and replace it with the permanent digital antenna at the same height of 570 meters HAAT.

(5) Any other relevant factors.

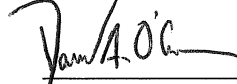
Griffin has made diligent efforts to comply with all DTV deadlines set by the Commission. Given that Griffin has substantially complied with the replication requirements, and given further that KOTV-DT has not yet been issued a permanent post-transition channel, Griffin should not be detrimentally harmed by losing its interference protection for replicated facilities due to physical limitations beyond its control. Finally, the public interest in the efficient provision of DTV service should not be undermined by such an outcome.

Conclusion

For the reasons set forth above, Griffin respectfully requests a waiver of the July 1, 2005 deadline for complying with the build-out requirements set forth in the *Second Periodic Review*.

Respectfully submitted,

GRIFFIN LICENSING, L.L.C.



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¹¹ See *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, DA 04-2446 (rel. Aug. 3, 2004).